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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,806	12/10/2003	George S. Avery	028068-0306579 AVS-001	8856

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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/733,806	AVERY, GEORGE S.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/03, 05/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 11-20 in the paper filed April 10, 2006, is acknowledged. Claims 1-10 are cancelled as requested in the amendment of the same date. Thus, the pending claims are 11-20.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 11, 12, 14, and 17-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9-15 of copending Application No. 10/845,858. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims overlap.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 11 is indefinite for the use of the phrase "fibers pre-stressed so as to have a non-linear shape with lateral excursions when not under tension." It is unclear what is meant by "lateral excursions." For the purposes of examination, the claims are interpreted as being limited to a "curlicued" form. Note specification, page 2, lines 21-24. Also note that spiral or helical crimped fibers would read on the claim limitation.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 11, 12, 19, and 20 are rejected under 35 USC 102(b) as being anticipated by US 3,940,522 issued to Wessells.

Wessells discloses an artificial turf made by tufting a combined yarn into a backing (abstract, col. 2, line 47 – col. 2, line 9, and Figures 3 and 4). The combined yarn comprises a plurality of crimped or crimpable continuous filaments and one or more grass-like fibers (col. 2, lines 47-58). When crimped, the continuous filaments expand and press sideways to meet fibers of adjacent tufts, thereby filling the space between the tufts (col. 2, line 65 – col. 3, line 3). Since the crimped continuous filaments pressing into the neighboring tufts correlate to applicant's resilient first fibers pre-stressed so as to have a non-linear shape with lateral excursions when not under tension, claim 11 is clearly anticipated by the cited Wessells patent.

Regarding claim 12, Figure 4 shows the grass-like fibers at a height greater than the crimped fibers. With respect to claims 19 and 20, Wessells teaches the pile may be made of polyamide or polyolefin (i.e., polyethylene) materials (col. 8, lines 19-29). Additionally, the working examples of Wessells employ nylon filaments for the crimped fibers (col. 10, lines 22-60). Therefore, claims 12, 19, and 20 are also anticipated by the Wessells patent.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Wessells patent in view of US 6,551,689 issued to Prevost.

Wessells fails to teach the addition of an infill comprising resilient particles (i.e., rubber) in the inventive artificial turf. However, said addition is well known in the art of synthetic grass as a means to provide resiliency mimicking natural grass and soil. For example, Prevost teaches an infill for artificial grass comprising at least a top layer of rubber particles held in place by a lattice of emeshed grass-like pile ribbons (abstract and col. 1, lines 11-15). Thus, it would have been readily obvious to one skilled in the art to add an infill material of resilient particles to the invention of Wessells in order to provide a more realistic turf product. Additionally, since the emeshed pile ribbons hold it said infill in place, it would have been readily obvious to employ said infill to the height of the crimped filaments. Therefore, claims 13 and 15-17 are rejected over the cited prior art.

11. Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Wessells patent.

With respect to claim 14, while pile heights exemplified by Wessells are less than that presently claimed, Wessells explicitly states "pile levels are not considered essential herein as long as the crimped fibers as described above, are present" (col. 9, lines 6-8). Thus, it would have been readily obvious to one skilled in the art to modify the pile height in order to produce an artificial turf of a desired plushness, resiliency, appearance, and texture. Therefore, claim 14 is rejected as being obvious over the cited prior art.

Claim 18 is similarly rejected in that while the tuft spacing of Wessells is less than that presently claimed, it would have been readily obvious to modify said spacing in order to achieve a desired tuft density. It has been held that discovering an optimum value of a result effective

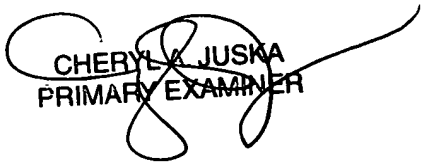
variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Therefore, claim 18 is also rejected.

Conclusion

12. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



cj
June 25, 2006